

31 (Amended). The catheter of Claim 29 wherein the distal end of the second tube is coterminous with the distal end of the third tube, both of which extend beyond the distal end of the first tube.

32 (Amended). The catheter of Claim 29 wherein the lumen of the first elongated tube has an inside diameter less than twice the outside diameter of the treating element.

b1
Canal
33 (Amended). The catheter of Claim 29 wherein the first elongated tube includes an internal barrier to block the passage of the treating element out of the first tube.

B2 Subcr
37 (Amended). The catheter of Claim 35 wherein the distal end of the third tube tapers to a narrow, flexible atraumatic tip.

REMARKS

Applicants will address each of the Examiner's objections and rejections in the order in which they appear in the Office Action of June 20, 2002.

Claim Objections

Claims 30-34 and 37 are objected to for informalities. In particular, the Examiner notes that Claim 30 is dependent on Claim 30.

Applicants have amended Claim 30 to now depend on independent Claim 29. Applicants have also amended Claims 31-33 and 35 to correct the dependencies therein. It is believed that each of these amendments is merely to correct minor errors in the claims and is not a narrowing amendment.

Accordingly, it is requested that the objections to these claims now be withdrawn.

Claim Rejections - 35 USC §112

The Examiner also rejects Claims 31 and 37 under 35 USC §112, second paragraph as being indefinite.

In particular, the Examiner believes that the dependency of Claim 31 on Claim 30 causes confusion in Claim 31. Applicants have amended Claim 31 so it now depends on Claim 29. This should overcome the Examiner's rejection.

The Examiner also rejects Claim 37 as having an insufficient antecedent basis for the term "the outer tube." This is another minor error. The claim should instead recite --the third tube-- which has an antecedent basis in independent Claim 29 for which Claim 37 indirectly depends. Applicants have amended the claim accordingly. This should overcome the Examiner's rejection.

Therefore, it is respectfully requested that the §112 rejection now be withdrawn.

Claim Rejections - 35 USC §102

Rejection of Claims 29-34 Over Nita

The Examiner also rejects Claims 29-34 under 35 USC §102 as being anticipated by Nita. This rejection is respectfully traversed.

Independent Claim 29 of the present application is directed to a "catheter for use in a system for intraluminal treatment of a selected site in a body of a patient by at least one treating element movable in the catheter by means of pressurized fluid." It is respectfully submitted that Nita does not disclose or suggest such a catheter.

Nita is directed to an ultra-sound catheter which has an ultrasound transmission member or wire "extending longitudinally therethrough" (see Abstract in Nita). As explained in Col. 5, lns. 17-23 of Nita, the ultrasound transmission member or wave guide (24) extends longitudinally through the lumen of the catheter body to transmit ultrasound energy from an ultrasound transducer connected to the proximal end of the catheter to the distal end thereof. There appears to be no disclosure or suggestion of a treating element movable by means of pressurized fluid, as required in Claim 29.¹

In fact, fluid is only mentioned in Nita as a coolant liquid or fluid like a medicament (see col. 9, ln. 57- col. 10, ln. 28).

¹Applicants note that the treating element is not only recited in the preamble in Claim 29 but also in the limitation of "a first elongated tube having a lumen closed at its distal end and sized to slidingly receive the treating element."

Such a fluid is clearly not for moving a treating element as in the claimed invention. Hence, this is clearly a different device than that claimed in the present application.

Further, independent Claim 29 requires "a third elongated tube for receiving the first and second elongated tubes and defining a space between the third tube and the first and second tubes, the space comprising a fluid return lumen in fluid communication with the lumen of the first elongated tube at the distal end thereof."

Such a return lumen is not disclosed or suggested in Nita. Nita discloses fluid outflow apertures (e.g. 50) to permit fluid to flow out of lumen at the distal end of the catheter (see e.g. Fig. 2). Such apertures do not provide a fluid return lumen nor fluid communication between the third tube and the lumen of the first elongated tube at the distal end, as required in Claim 29.

Accordingly, for at least the above-stated reasons, independent Claim 29 and the claims dependent thereon are clearly patentable over the cited reference. Therefore, it is requested that this rejection now be withdrawn.

Rejection of Claims 29 and 30 Over Yock

The Examiner also rejects Claims 29 and 30 under 35 USC §102(e) as being anticipated by Yock. This rejection is also traversed.

This reference also is not directed to "catheter for use in a system for intraluminal treatment of a selected site in a body of a patient by at least one treating element movable in the catheter

by means of pressurized fluid," as required in independent Claim 29.

Instead, Yock is directed to an angioplasty apparatus having a balloon dilatation catheter (see col. 6 of Yock) with a distal dye. There appears to be no disclosure or suggestion of a treating element movable in the catheter by means of pressurized fluid. Further, the balloon is located outside the catheter during treatment.

Furthermore, there appears to be no third elongated tube defining a space for a fluid return lumen in fluid communication with the lumen of the first elongated tube, as required in Claim 29. Instead, Yock merely appears to disclose a vent tube 51 for venting air from the balloon during inflation of the balloon and before insertion into the patient with radiopaque liquid (see col. 6, lns. 35-42 of Yock). This is clearly different than the claimed element.

Accordingly, for at least the above-stated reasons, Claims 29 and 30 are clearly patentable over the cited reference. Therefore, it is requested that this rejection now be withdrawn.

Rejection of Claims 29-33, 35 and 37 Over Ginn

The Examiner also rejects Claims 29-33, 35 and 37 under 35 USC §102(e) as being anticipated by Ginn. This rejection is also traversed.

Ginn is directed to a vascular catheter. It does not appear to have any disclosure or suggestion of at least one treating

element movable in the catheter by means of pressurized fluid, as required in independent Claim 29.

Further, Ginn does not disclose or suggest a third elongated tube for receiving first and second elongated tubes and defining a space for a fluid return lumen, as required in Claim 29. Instead, Ginn has two lumens at the proximal end and a single lumen at the distal end (see col. 4, lns. 13-15). Hence, there is no space for a fluid return lumen, as recited in Claim 29.

Accordingly, for at least the above-stated reasons, independent Claim 29 and the claims dependent thereon are clearly patentable over the cited reference. Therefore, it is requested that this rejection now be withdrawn.

Rejection of Claims 29, 30, 35 and 37 Over Weaver

Finally, the Examiner rejects Claims 29, 30, 35 and 37 under 35 USC §102(e) as being anticipated by Weaver. This rejection is also traversed.

Weaver is directed to a catheter for advancement through the accessory channel on an endoscope into a body passage into the gastrointestinal system for a ERCP procedure wherein a radio-opaque contrast medium is injected through a lumen to identify obstructions such as bile stones. There appears to be no disclosure of at least one treating element movable in the catheter by means of pressurized fluid, as required in Claim 29.

Further, there appears to be no disclosure of a third elongated tube for receiving first and second elongated tubes and

defining a space for a fluid return lumen, as required in Claim 29.

Accordingly, for at least the above-stated reasons, the rejected claims are clearly patentable over the cited reference. Therefore, it is requested that this rejection now be withdrawn.

Conclusion

Therefore, for at least the above-stated reasons, the present application is now in an allowable condition and should be allowed.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,


Mark J. Murphy
Registration No. 34,225

COOK, ALEX, MCFARRON, MANZO,
CUMMINGS & MEHLER, LTD.
200 West Adams Street
Suite 2850
Chicago, Illinois 60606
(312) 236-8500